



Paper No. 5

LEONARD L. LEWIS, ESQ.
CALFEE, HALTER & GRISWOLD LLP
800 SUPERIOR AVE., SUITE 1400
CLEVELAND, OH 44114-2688

COPY MAILED

MAY 28 2002

OFFICE OF PETITIONS

In re Application of
Matko, et al.
Application No. 10/034,203
Filed: February 13, 2002
Docket No. 28679/04047
For: MOUNTING ASSEMBLY FOR NIGHT
VISION

:
:
ON PETITION
:
:
:

This is a decision on the petition filed February 15, 2002 (Express Mail date-in February 13, 2002), requesting withdrawal of the Notice of Incomplete Nonprovisional Application mailed January 30, 2002, or in the alternative, accordation of a February 13, 2002 filing date for the above-identified application.

The application was deposited on February 13, 2002. However, on January 30, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners that no drawings were deposited with the application papers on December 20, 2001, and stating that the filing date would be the date of receipt of the omitted drawings.

In response, on February 15, 2002 (Express Mail date-in February 13, 2002), 3 sheets of drawings containing Figures 1-11, and the petition were filed. Petitioners argue that the Notice mailed January 30, 2002, was in error because the sheets of drawings containing Figures 1-11 were filed on December 20, 2001.

Petitioners have provided no evidence of a December 20, 2001 deposit of Figures 1-11. The official file contains no drawings.

As set forth in MPEP 506, an application is considered incomplete, if it omits one or more drawings which are described in the specification. Clearly, Figures 1-11 are described in the specification. Since the application as deposited refers to Figures 1-11, the application is prima facie incomplete in the absence of those figures.

The petition to accord a December 20, 2001 filing date to the above-identified application is dismissed.

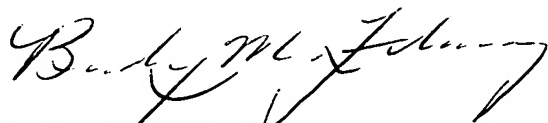
However, the application is entitled to a filing date of February 13, 2002, the date the drawings containing Figures 1-11 were filed in the Office. However, the declaration filed on March 26, 2002 (certificate of mailing date March 19, 2002), refers to the application as deposited on December 20, 2001, and does not refer to Figures 1-11, since Figures 1-11 were not included with the application papers deposited on December 20, 2001. Accordingly, a supplemental oath or declaration by the inventors stating that the drawings of Figures 1-11 filed on February 13, 2002, accurately illustrate their invention and were a part of their invention when they were filed

is required.

A supplemental oath or declaration referring to the drawings of Figures 1-11 filed February 13, 2002, must be filed within **TWO MONTHS** of the date of this decision in order to avoid **abandonment**. This time period may be extended pursuant to 37 CFR 1.136(a).

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of February 13, 2002 and to await submission of a supplemental oath or declaration referring to the drawings of Figures 1-11.

Telephone inquiries specific to this matter should be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy